

§ 1952.295

System, the Assistant Secretary evaluated actual operations under the Nevada State plan for a period of at least one year following certification of completion of developmental steps. Based on an 18(e) Evaluation Report covering the period July 1, 1995 through March 31, 1999, and after opportunity for public comment, the Assistant Secretary determined that in operation the State of Nevada's occupational safety and health program is at least as effective as the Federal program in providing safe and healthful employment and places of employment and meets the criteria for final State plan approval in section 18(e) of the Act and implementing regulations at 29 CFR Part 1902. Accordingly, the Nevada plan was granted final approval and concurrent Federal enforcement authority was relinquished under section 18(e) of the Act effective April 18, 2000.

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Nevada. The plan does not cover Federal government employers and employees; any private sector maritime activities; employment on Indian land; any contractors or subcontractors on any Federal establishment where the land is determined to be exclusive Federal jurisdiction; and the U.S. Postal Service (USPS), including USPS employees, contract employees, and contractor-operated facilities engaged in USPS mail operations.

(c) Nevada is required to maintain a State program which is at least as effective as operations under the Federal program; to submit plan supplements in accordance with 29 CFR Part 1953; to allocate sufficient safety and health enforcement staff to meet the benchmarks for State staffing established by the U.S. Department of Labor, or any revisions to those benchmarks; and, to furnish such reports in such form as the Assistant Secretary may from time to time require.

[65 FR 20742, Apr. 18, 2000, as amended at 65 FR 36627, June 9, 2000]

29 CFR Ch. XVII (7–1–11 Edition)

§ 1952.295 Level of Federal enforcement.

(a) As a result of the Assistant Secretary's determination granting final approval to the Nevada State plan under section 18(e) of the Act, effective April 18, 2000, occupational safety and health standards which have been promulgated under section 6 of the Act do not apply with respect to issues covered under the Nevada Plan. This determination also relinquishes concurrent Federal OSHA authority to issue citations for violations of such standards under section 5(a)(2) and 9 of the Act; to conduct inspections and investigations under section 8 (except those necessary to conduct evaluation of the plan under section 18(f) and other inspections, investigations, or proceedings necessary to carry out Federal responsibilities not specifically preempted by section 18(e)); to conduct enforcement proceedings in contested cases under section 10; to institute proceedings to correct imminent dangers under section 13; and to propose civil penalties or initiate criminal proceedings for violations of the Federal OSH Act under section 17. The Assistant Secretary retains jurisdiction under the above provisions in any proceeding commenced under section 9 or 10 before the effective date of the 18(e) determination.

(b)(1) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Nevada plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to any private sector maritime activities (occupational safety and health standards comparable to 29 CFR Parts 1915, shipyard employment; 1917, marine terminals; 1918, longshoring; and 1919, gear certification, as well as provisions of general industry and construction standards (29 CFR Parts 1910 and 1926) appropriate to hazards found in these employments), employment on

Indian land, and any contractors or subcontractors on any Federal establishment where the land is determined to be exclusive Federal jurisdiction. Federal jurisdiction is also retained with respect to Federal government employers and employees. Federal OSHA will also retain authority for coverage of the U.S. Postal Service (USPS), including USPS employees, contractor employees, and contractor-operated facilities engaged in USPS mail operations.

(2) In addition, any hazard, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdiction for reasons which OSHA determines are not related to the required performance or structure of the plan shall be deemed to be an issue not covered by the State plan which has received final approval, and shall be subject to Federal enforcement. Where enforcement jurisdiction is shared between Federal and State authorities for a particular area, project, or facility, in the interest of administrative practicability Federal jurisdiction may be assumed over the entire project or facility. In any of the aforementioned circumstances, Federal enforcement authority may be exercised after consultation with the State designated agency.

(c) Federal authority under provisions of the Act not listed in section 18(e) is unaffected by final approval of the Nevada State plan. Thus, for example, the Assistant Secretary retains his authority under section 11(c) of the Act with regard to complaints alleging discrimination against employees because of the exercise of any right afforded to the employee by the Act, although such complaints may be referred to the State for investigation. The Assistant Secretary also retains his authority under section 6 of the Act to promulgate, modify or revoke occupational safety and health standards which address the working conditions of all employees, including those in States which have received an affirmative 18(e) determination, although such standards may not be Federally applied. In the event that the State's 18(e) status is subsequently withdrawn and Federal authority reinstated, all Federal standards, including any

standards promulgated or modified during the 18(e) period, would be Federally enforceable in that State.

(d) As required by section 18(f) of the Act, OSHA will continue to monitor the operations of the Nevada State program to assure that the provisions of the State plan are substantially complied with and that the program remains at least as effective as the Federal program. Failure by the State to comply with its obligations may result in the suspension or revocation of the final approval determination under Section 18(e), resumption of Federal enforcement, and/or proceedings for withdrawal of plan approval.

[65 FR 20742, Apr. 18, 2000, as amended at 65 FR 36627, June 9, 2000]

§ 1952.296 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations: Office of State Programs, Directorate of Federal-State Operations, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N3700, Washington, DC 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, Room 415, 71 Stevenson Street, San Francisco, California 94105; Office of the State Designee, Administrator, Nevada Division of Industrial Relations, 400 West King Street, Suite 400, Carson City, Nevada 89703.

[65 FR 20743, Apr. 18, 2000]

§ 1952.297 Changes to approved plans.

(a) *Legislation.* (1) On March 29, 1994, the Assistant Secretary approved Nevada's revised statutory penalty levels which are the same as the revised Federal penalty levels contained in section 17 of the Act as amended on November 5, 1990.

(2) [Reserved]

(b) *Notices of violation.* The State submitted a procedure for issuing notices of violation in lieu of citations for certain other than serious violations which the employer agrees to abate.